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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,890	12/22/2003	Roger F. Joyce	BIL100037000	1677
22891 7590 07/24/2007 LAW OFFICE OF DELIO & PETERSON, LLC. 121 WHITNEY AVENUE 3RD FLOOR NEW HAVEN, CT 06510			EXAMINER KWIECINSKI, RYAN D	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 07/24/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/743,890		JOYCE ET AL.	
	Examiner		Art Unit	
	Ryan D. Kwiecinski		3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/7/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5 and 9-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-14 is/are allowed.
- 6) ☒ Claim(s) 1,5,15-18 and 21-27 is/are rejected.
- 7) ☒ Claim(s) 19-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,428,925 to Snyder in view of US 4,493,118 to Braxton.

Claim 1:

Snyder discloses a polymer composite basement door comprising:

a polymer composite (Column 4 line 38) frame (10, Fig.1) positioned on a foundation surrounding an opening (20, Fig.1) adjacent a building structure (22, Fig.1), the frame having opposed triangular sidewalls (12, 14, Fig.1) having a base (26, Fig.1), vertical leg (vertical portion of side wall adjacent 22, Fig.1), upper sloping surface (16, Fig.1), end and inner and outer walls (Fig.1) and a header plate (sloping portion of top adjacent 22, Fig.1) connecting each sidewall, with the header plate and vertical leg adjacent the building structure (Fig.1);

one or more polymer composite door leafs (40, 50, Fig.1) hinged to the sidewalls (42, 44, Fig.1) for movement between an elevated open position

providing access to the opening and a closed position covering the opening
(Shown open and closed in Fig.1).

Snyder does not disclose a polymer composite basement door comprising one or more through openings in one or both of the sidewalls; and one or more inserts in the through opening.

Braxton discloses one or more through openings (opening covered by 45, Fig.1) in one or both of the sidewalls (the walls are made of a polymer composite material); and one or more inserts in the through opening (45, Fig.1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have created polymer composite basement door of Snyder et al. with one or more through openings with inserts taught by Braxton in order to provide a means for ventilation and lighting. Although Braxton does not directly teach the openings and inserts in basement doors, he does teach the openings and inserts in a polymer composite structure. Using this teaching in the construction of Snyder et al.'s basement door would have been obvious.

Claims 5 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,428,925 to Snyder in view of US 5,749,182 to Vavrinak in view of US 2,174,989 to Lyons.

Claim 5:

Snyder discloses a polymer composite basement door comprising:

a polymer composite (Column 4 line 38) frame (10, Fig. 1) positioned on a foundation surrounding an opening (20, Fig. 1) adjacent a building structure (22, Fig. 1), the frame having opposed triangular sidewalls (12, 14, Fig. 1) having a base (26, Fig. 1), vertical leg (vertical portion of side wall adjacent 22, Fig. 1), upper sloping surface (16, Fig. 1), end and inner and outer walls (Fig. 1) and a header plate (sloping portion of top adjacent 22, Fig. 1) connecting each sidewall, with the header plate and vertical leg adjacent the building structure (Fig. 1);

one or more polymer composite door leafs (40, 50, Fig. 1) hinged to the sidewalls (42, 44, Fig. 1) for movement between an elevated open position providing access to the opening and a closed position covering the opening (Shown open and closed in Fig. 1).

one or more accessible through openings in the base (34, Fig. 3) for fastening the base to the foundation.

Snyder does not disclose and one or more accessible through openings in the legs for fastening the leg to the structure or to an extender nor does he disclose the through openings in the base to be elongated longitudinal slotted through openings.

Vavrinak teaches elongated longitudinal through openings in a flange secured to a foundation (A, Fig. 1).

Lyons teaches one or more accessible through openings in the legs (holes on 22, Fig. 1) for fastening the leg to the structure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the through openings in the base of Snyder's basement door to be elongated longitudinal slotted through openings taught by Vavrinak in order to provide leeway in the longitudinal direction for the installation of the fasteners as well as the movement of the basement door itself. Using elongated openings in flange mounts to foundations is well known in the art. The elongated slotted openings allow for expansion and contraction of the basement door assembly as well as provide easier installation with more longitudinal space to insert a fastener.

It is also obvious to one of ordinary skill in the art at the time the invention was made to have used the same technique in securing the base to the foundation as one would in securing the vertical legs to the building as taught by Lyons. Securing the basement door to the building structure with the use of through openings and fasteners is notoriously well known in the art.

Claim 25:

Snyder discloses a polymer composite basement door comprising:

a polymer composite (Column 4 line 38) frame (10, Fig. 1) positioned on a foundation surrounding an opening (20, Fig. 1) adjacent a building structure (22, Fig. 1), the frame having opposed triangular sidewalls (12, 14, Fig. 1) having a base (26, Fig. 1), vertical leg (vertical portion of side wall adjacent 22, Fig. 1), upper sloping surface (16, Fig. 1), end and inner and outer walls (Fig. 1) and a header

plate (sloping portion of top adjacent 22, Fig.1) connecting each sidewall, with the header plate and vertical leg adjacent the building structure (Fig.1);

one or more polymer composite door leafs (40,50, Fig.1) hinged to the sidewalls (42,44, Fig.1) for movement between an elevated open position providing access to the opening and a closed position covering the opening (Shown open and closed in Fig.1).

one or more accessible through openings in the base (34, Fig.3) for fastening the base to the foundation.

Snyder does not disclose and one or more accessible through openings in the legs for fastening the leg to the structure or to an extender nor does he disclose the through openings in the base to be elongated longitudinal slotted through openings with their length increasing towards the end of the sidewall.

Vavrinak teaches elongated longitudinal through openings in a flange secured to a foundation (A, Fig.1).

Lyons teaches one or more accessible through openings in the legs (holes on 22, Fig.1) for fastening the leg to the structure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the through openings in the base of Snyder's basement door to be elongated longitudinal slotted through openings taught by Vavrinak in order to provide leeway in the longitudinal direction for the installation of the fasteners as well as the movement of the basement door itself. Using elongated openings in flange mounts to foundations is well known in the

art. The elongated slotted openings allow for expansion and contraction of the basement door assembly as well as provide easier installation with more longitudinal space to insert a fastener.

It is also obvious to one of ordinary skill in the art at the time the invention was made to have used the same technique in securing the base to the foundation as one would in securing the vertical legs to the building as taught by Lyons. Securing the basement door to the building structure with the use of through openings and fasteners is notoriously well known in the art.

It would have been obvious to have increased the length of the holes as they get closer to the end of the sidewall because it will become harder to fasten the basement door assembly to the foundation since the space required to insert a tool becomes smaller and smaller. The increased length of the slotted opening will then allow the tool to be more accessible to the opening.

Claim 26:

Snyder in view of Vavrinak in view of Lyons discloses the basement door of claim 25, Lyons also discloses at least two accessible through openings (the two openings in the vertical leg, Fig.1) in the leg but does not directly disclose the upper openings being slotted and angled to the vertical axis of the sidewall.

It would have been obvious to form the slotted openings in the vertical legs at an angle in order to allow for expansion and contraction in both the vertical and horizontal directions. The angled slotted openings also create easier

installation allowing the basement door assembly to be shifted vertically and horizontally until fit in the correct position to be tightened down.

Claim 27:

Snyder in view of Vavrinak in view of Lyons discloses the basement door of claim 26, Snyder discloses a sill (32, Fig.1) positioned transverse to the opposed sidewalls at the end of the sidewalls and having a plurality of slotted through openings (34, Fig.3) for fastening the sill to the foundation, Vavrinak discloses the elongated slotted openings (A, Fig.1).

Claim 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,428,925 to Snyder in view of US 5,749,182 to Vavrinak in view of US 3,103,996 to Wyatt Jr. in view of US 4,493,118 to Braxton.

Claim 15:

Snyder discloses a polymer composite basement door comprising:
a polymer composite (Column 4 line 38) frame (10, Fig.1) positioned on a foundation surrounding an opening (20, Fig.1) adjacent a building structure (22, Fig.1), the frame having opposed triangular sidewalls (12, 14, Fig.1) having a base (26, Fig.1), vertical leg (vertical portion of side wall adjacent 22, Fig.1), upper sloping surface (16, Fig.1), end and inner and outer walls (Fig.1) and a header plate (sloping portion of top adjacent 22, Fig.1) connecting each sidewall, with the header plate and vertical leg adjacent the building structure (Fig.1);

one or more polymer composite door leafs (40,50, Fig.1) hinged to the sidewalls (42,44, Fig.1) for movement between an elevated open position providing access to the opening and a closed position covering the opening (Shown open and closed in Fig.1).

one or more accessible through openings in the base (34, Fig.3) for fastening the base to the foundation.

Snyder does not disclose a polymer composite basement door comprising one or more through openings in one or both of the sidewalls; and one or more inserts in the through opening;

one or more accessible through openings in the legs for fastening the leg to the structure or to an extender nor does he disclose the through openings in the base to be elongated longitudinal slotted through openings; and

wherein the header plate has a straight rear edge for positioning against the structure and a U-shaped front edge with a left arm and a right arm and a raised lip.

Braxton discloses one or more through openings (opening covered by 45, Fig.1) in one or both of the sidewalls (the walls are made of a polymer composite material); and one or more inserts in the through opening (45, Fig.1).

Vavrinak teaches elongated longitudinal through openings in a flange secured to a foundation (A, Fig.1).

Wyatt Jr. discloses the header plate (14, Fig.2) has a straight rear edge (40, Fig.2) for positioning against the structure and a U-shaped edge (42, 44,

Fig.2) with a left arm (side of 44, Fig.2) and a right arm (side opposite 44) and a raised lip (40,42,44, Fig.2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have created polymer composite basement door of Snyder et al. with one or more through openings with inserts taught by Braxton in order to provide a means for ventilation and lighting. Although Braxton does not directly teach the openings and inserts in basement doors, he does teach the openings and inserts in a polymer composite structure. Using this teaching in the construction of Snyder et al.'s basement door would have been obvious.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the through openings in the base of Snyder's basement door to be elongated longitudinal slotted through openings taught by Vavrinak in order to provide leeway in the longitudinal direction for the installation of the fasteners as well as the movement of the basement door itself. Using elongated openings in flange mounts to foundations is well known in the art. The elongated slotted openings allow for expansion and contraction of the basement door assembly as well as provide easier installation with more longitudinal space to insert a fastener. It would have also been obvious to secure the vertical legs to the supporting structure the same way the base was secured to the foundation, since both the base and the vertical legs need to be secured tightly in order to prevent moisture from entering the basement door.

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This will also allow ease of installation and leeway for the basement door to expand and contract with the temperature changes.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the header of the basement door of Snyder as taught by Wyatt Jr. in order to provide a water proof basement door assembly by providing flanges and a connection between the header and sloped upper surfaces that will direct water down the sloping surface and away from the basement door assembly.

Claim 16:

Snyder in view of Vavrinak in view of Wyatt Jr. in view of Braxton discloses the basement door of claim 15, Braxton also discloses wherein the insert is a screen (45, Fig.1).

Claim 17:

Snyder in view of Vavrinak in view of Wyatt Jr. in view of Braxton discloses the basement door of claim 16, although they do not directly disclose the slotted openings getting longer towards the end of the sidewall it would have been obvious to have increased the length of the holes as they get closer to the end of the sidewall because it will become harder to fasten the basement door assembly to the foundation since the space required to insert a too becomes smaller and smaller. The increased length of the slotted opening will then allow the tool to be more accessible to the opening.

Claim 18:

Snyder in view of Vavrinak in view of Wyatt Jr. in view of Braxton discloses the basement door of claim 17, although they do not directly disclose the slotted opening being formed at an angle towards the vertical it would have been obvious to form the slotted openings in the vertical legs at an angle in order to allow for expansion and contraction in both the vertical and horizontal directions. The angled slotted openings also create easier installation allowing the basement door assembly to be shifted vertically and horizontally until fit in the correct position to be tightened down.

Claims 21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,428,925 to Snyder in view of US 4,493,118 to Braxton.

Claim 21:

Snyder discloses a polymer composite basement door comprising:
a polymer composite (Column 4 line 38) frame (10, Fig.1) positioned on a foundation surrounding an opening (20, Fig.1) adjacent a building structure (22, Fig.1), the frame having opposed triangular sidewalls (12, 14, Fig.1) having a base (26, Fig.1), vertical leg (vertical portion of side wall adjacent 22, Fig.1), upper sloping surface (16, Fig.1), end and inner and outer walls (Fig.1) and a header plate (sloping portion of top adjacent 22, Fig.1) connecting each sidewall, with the header plate and vertical leg adjacent the building structure (Fig.1);

one or more polymer composite door leafs (40,50, Fig.1) hinged to the sidewalls (42,44, Fig.1) for movement between an elevated open position providing access to the opening and a closed position covering the opening (Shown open and closed in Fig.1).

Snyder does not disclose a polymer composite basement door comprising one or more through openings in one or both of the sidewalls; and one or more inserts in the through opening for a screen.

Braxton discloses one or more through openings (opening covered by 45, Fig.1) in one or both of the sidewalls (the walls are made of a polymer composite material); and one or more inserts in the through opening for a screen (45, Fig.1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have created polymer composite basement door of Snyder et al. with one or more through openings with inserts taught by Braxton in order to provide a means for ventilation and lighting. Although Braxton does not directly teach the openings and inserts in basement doors, he does teach the openings and inserts in a polymer composite structure. The screen insert will also allow for ventilation as well as a guard against dirt and insects. Using this teaching in the construction of Snyder et al.'s basement door would have been obvious.

Claim 23:

Snyder in view of Braxton disclose the basement door of claim 21, Braxton also discloses the insert is a screen (45, Fig.1).

Claim 24:

Snyder in view of Braxton disclose the basement door of claim 21, although Braxton does not directly disclose the insert may be changed without the use of tools, Braxton does not disclose the use of fasteners to secure the window, therefore it would have been obvious to have formed an insert that can be assembled and disassembled without the use of tools.

It should be noted that claim 24 is considered product-by-process claims, therefore, determination of patentability is based on the product itself. See MPEP 2113. The patentability of the product does not depend on its method of production. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985)

The claim recites changing an insert without tools but does not provide any structure to the insert or the basement door.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,428,925 to Snyder in view of US 4,493,118 to Braxton in view of US 5,093,941 to Müller.

Claim 22:

Snyder in view of Braxton disclose the basement door of claim 21, but does not disclose the insert is a window.

Müller discloses the insert is a window (29, Fig.3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a window as an insert taught by Müller in order to be able to light into the basement door assembly while keeping out the moisture, dirt and insects from the outside environment. Interchanging screens and windows is notoriously well known in the art of doors and window assemblies.

Response to Arguments

Applicant's arguments, see pages 10-11, filed 07 May 2007, with respect to the rejection(s) of claim(s) 1 under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Snyder in view of Braxton.

Applicant's arguments filed 07 May 2007, with respect to the rejection of claim 5, have been fully considered but they are not persuasive. Although Vavrinak is directed to a system for protecting an exposed upper surface of a building foundation, Vavrinak still discloses the use of elongated slots to secure the flange to the building foundation, which is same method that is disclosed by the Applicant in claim 5. The flange of the basement door assembly is being secured to the building foundation by inserting fasteners through the elongated slotted openings of the flange member. Therefore

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elongated slotted openings of Vavrinak are analogous to the elongated slotted openings of claim 5.

Allowable Subject Matter

Claims 9-14 are allowed.

Claims 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan D. Kwiecinski whose telephone number is (571)272-5160. The examiner can normally be reached on Monday - Friday from 8 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571)272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


RDK

Robert Canfield
Primary Examiner

